raised as a defence fair comment on a matter of public interest.

The principle has clearly emerged by reason of the fact that the questions of libel or no libel are eminently matters to be decided on facts at the trial and there is also the question of the proper meaning to be assigned to the words used in a particular statement. To restrain a defendant before the questions are determined would amount to fettering with free speech. Indeed it is because of the importance of leaving free speech unfettered that the Court must be slow in issuing interim injunction in a libel action.

In applying these principles, value is placed by the Court upon the freedom of speech which is related to the freedom of the press when balancing it against the reputation of a single individual who, if wronged, can be adequately compensated in damages. The Court should act cautiously in granting interim injunction to restrain publication of an alleged defamatory statement. In fact it should not grant the injunction where the defendant says he is going to justify it at the trial of the action except where the statement is obviously untruthful or where the plaintiff has satisfied the Court that the defence will fail. That was made clear by Denning M.R. in *Harakas* v. *Baltic Exchange.*[9]

It was for these reasons that we allowed the appeal with costs, and ordered that the order of the learned Judge be set aside.

*Appeal allowed.*

Solicitors: *Shearn Delamore & Co.; C.K. Leong & Co.*

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## NKM HOLDINGS SDN. BHD. v. PAN MALAYSIA WOOD BHD.

**[S.C. (Seah, Syed Agil Barakbah & Wan Hamzah S.C. JJ.) April 23 & June 24, 1986]**

**[Kuala Lumpur – Supreme Court Civil Appeal No. 277 of 1984]**

*Company Law – Winding up – Advertisement – Dispensation – Advertisement of winding up in Gazette a statutory requirement – Duty of Court – Companies (Winding-up) Rules 1972, r. 24(a).*

*Interpretation – Statute – Duty of the Court.*

In this case the learned trial judge had exercised his discretion in dispensing with the advertisements either in the *Gazette* or in the newspapers of a new date for the hearing of a winding-up petition on the facts of the particular case ([1985] 2 M.L.J. 390). In his judgment the learned judge remarked that "the need to gazette has indeed deteriorated into a mere formality and in the face of the existence of widely circulated daily newspapers has perhaps become an anachronism." The appellants appealed.

**Held** (1) the learned judge had correctly exercised his discretion in dispensing with the advertisements;

(2) advertisement of a winding-up petition in the *Gazette* is a statutory requirement and deliberate non-compliance with this provision may result in adverse consequences;

(3) the duty of the Court and its only duty is to expound the language of the Act in accordance with the settled rules of construction. The Court has nothing to do with the policy of the Act which it may be called upon to interpret.

*Cases referred to:*

(1) *R.* v. *Hughes* (1866) L.R. 1. P.C. 81, 91.
(2) *Vacher & Sons* v. *London Society of Compositors* [1913] A.C. 107.

SUPREME COURT.

*P.S. Ranjan* for the appellant.
*W.S.W. Davidson* for the respondent.

*Cur. Adv. Vult.*

**Seah S.C.J.** (delivering the Judgment of the Court): We dismissed the appeal as we were satisfied that the learned judge had properly exercised his discretion in dispensing with the advertisements either in the *Gazette* or in the newspapers of a new date for the hearing of a winding-up petition on the facts of this particular case. We would be content to rest the matter there had it not been for the fact that the learned judge spoke of the *Gazette* in language that might be wrongly interpreted. The learned judge said (at [1985] 2 M.L.J. 390, 391):

"I agree with Mr. Davidson that the need to gazette has indeed deteriorated into a mere formality and in the face of the existence of widely circulated daily newspapers has perhaps become an anachronism."

With respect to the learned judge, we are unable to agree with his view. Advertisement of a winding-up petition in the *Gazette* is a statutory requirement [see Rule 24(a) of the Companies (Winding-up) Rules 1972] and deliberate non-compliance with this provision may result in adverse consequences. It must always be borne in mind that we are Judges, not legislators. The

constitutional function of the courts is not only to interpret but also to enforce the laws enacted by Parliament. In enforcing the law we must be the first to obey it. It should be noted that the power of a Court to proceed in a particular course of administering justice, was one of substance and not merely of form. The duty of the Court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. The Court has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. It seems to us to be unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature. [See Lord Chelmsford in *R* v. *Hughes*(1) and Lord Macnaghten in *Vacher & Sons* v. *London Society of Compositors*(2)].

*Appeal dismissed.*

Solicitors: *Ng Ek Teong & Partners; Azman, Davidson & Co.*

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## TOH KIAN HIN v. TING DING WOI & ANOR.

**[O.C.J. (Chong Siew Fai J.) May 22, 1984]**

**[Sibu – Originating Summons No. 57 of 1983]**

*Land Law – Caveat – Removal of – Serious question to be tried – Allegation of fraud.*

In this case the plaintiff applied for an order of removal of the caveat lodged by the defendants against his land comprised in Sibu Lease of Crown Land No. 43376 and registered at Sibu Land Registry Office on May 26, 1983 as Sibu Instrument No. L.2300/1983. The land initially belonged to one John Ting Yew Chung (deceased) who was the father of the defendants. After the death of the deceased on September 18, 1979, letters of administration in respect of the deceased's estate which included the land was granted to the defendant's eldest brother Ting Ting Giong. Having transmitted the land to himself as representative of the deceased's estate on February 11, 1981 *vide* Sibu Instrument No. L.472/81, Ting Ting Giong transferred the land to one Ting Siong Hung as "beneficiary" of the deceased's estate. Later Ting Siong Hung sold the land to the plaintiff for $15,000. The plaintiff intended to use the land as security for a loan when he discovered the caveat.

**Held:** (1) fraud in an action seeking to affect a registered interest means actual fraud, dishonesty of some sort, not what is called constructive or equitable fraud. If the designed object of a transfer is to cheat a man of a known existing right, that is fraudulent, but the act must be dishonest, and dishonesty must not be assumed solely by reason of knowledge of an unregistered interest;

(2) in this case, there was no evidence on record indicating that the plaintiff had or should have suspected anything fishy thereby saddling him with the obligation to inquire;

(3) the court was not satisfied that as against the plaintiff there was a serious question to be tried. The said caveat should therefore be removed forthwith.

*Cases referred to:*

(1) *Eng Mee Yong & Ors.* v. *Letchumanan* [1979] 2 M.L.J. 212, 215.

(2) *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh* [1970] 1 M.L.J. 145.

(3) *Kasivisvanathan Chettiar* v. *Pereira* [1976] 2 M.L.J. 110.

(4) *Waimiha Sawmilling Co. Ltd.* v. *Waione Timber Co. Ltd.* [1926] A.C. 101, 106 & 107.

(5) *Assets Co. Ltd.* v. *Mere Roihi* [1905] A.C. 176.

(6) *Bagher Singh* v. *Chanan Singh & Anor.* [1961] M.L.J. 328.

ORIGINATING SUMMONS.

*Lawrence Lai* for the plaintiff.

*Teo Chong Lee* for the defendants.

*Cur. Adv. Vult.*

**Chong Siew Fai J.**: This is an application of the plaintiff for an order of removal of the caveat lodged by the defendants against his land comprised in Sibu Lease of Crown Land No. 43376 ("the land") and registered at the Sibu Land Registry Office on May 26, 1983 as Sibu Instrument No. L.2300/1983 (the caveat).

The background, so far as relevant to this case, leading to the institution of these proceedings may be briefly stated as follows. The land initially belonged to one John Ting Yew Chung (deceased) who was the father of the defendants. After the death of the deceased on September 18, 1979, letters of administration in respect of the deceased's estate, which included the land, was granted to the defendants' eldest brother Ting Ting Giong. Having transmitted the land to himself as representative of the deceased's estate on February 11, 1981 *vide* Sibu Instrument No. L.472/81 (see Exhibit "A" annexed to the plaintiff's affidavit affirmed on November 9, 1983), Ting Ting Giong transferred the land to one Ting Siong Hung as 'beneficiary' of the deceased's estate vide Sibu Instrument No. 473/81 registered on February 11, 1981 (see Exhibit "A" referred to above). According to a Memorandum of Transfer registered in the Sibu